Supreme Court, U. S.
FILED
FEB 2 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. ~~77~~-1090

FOUNDING CHURCH OF SCIENTOLOGY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner, The Founding Church of Scientology, respectfully prays that a Writ of Certiorari issue to review the Opinion and Judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The *per curiam* Opinion of the Court of Appeals, as yet unreported, was filed December 1, 1977, and appears as APPENDIX A. The Opinion was modified by Orders dated December 8, 1977, and January 9, 1978, and these Orders appear as APPENDICES B and C, respectively. The supplemental Opinions on Suggestion for Rehearing *En Banc* consisting of a statement of Circuit Judge Wright, joined by Chief Judge Bazelon and Circuit Judge Leventhal, and a statement of Circuit Judge Robinson, with whom Circuit Judge McGowan concurred, as yet unreported, were filed January 4, 1978, and appear as APPENDIX D.

The Opinion ["Memorandum and Order"] of the District Court is reported at 436 F. Supp. 689 (July 27, 1977) and appears as APPENDIX E.[1]

JURISDICTION

The Judgment of the Court of Appeals was entered on December 1, 1977. Petitioner timely filed a Petition for Rehearing, which was denied on January 4, 1978. A copy of the Order denying said petition appears as APPENDIX F. The mandate of the Court of Appeals was issued on December 7, 1977, upon the government's Motion for Immediate Issuance, but was recalled by an Order filed December 9, 1977, as directed by an Order issued December 8, 1977 by the Chief Justice of this Court.

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[1] Both in the Court of Appeals and in the District Court, these proceedings are entitled "In Re Search Warrant Dated July 4, 1977, for Premises at 2125 S Street, Northwest, Washington, D.C."

Thereafter, the Chief Justice having vacated his prior Order, petitioner moved the Court of Appeals to stay reissuance of the mandate pending Petition for Writ of Certiorari to the United States Supreme Court, which motion was granted on January 9, 1978, "to the extent that the Clerk is directed not to reissue the mandate in the case prior to February 13, 1978," and a copy of said Order appears as APPENDIX G.

The jurisdiction of this Court is invoked pursuant to 18 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the search warrant herein constitutes a forbidden general warrant in violation of the Fourth Amendment, viewing the warrant in the light of the guarantees of religious liberty, freedoms of speech and press, and freedom of association contained in the First Amendment, where, as here:

(a) the warrant commands a search of the files, records and papers of a religious organization for undescribed "evidence (at this time unknown) of the crimes of conspiracy, obstruction of justice and theft of government property . . . which facts recited in the accompanying affidavit make out;"

(b) the warrant, on its face admittedly fails to particularly describe the files, records and papers to be seized, but is allegedly "cured" by "incorporating" into the warrant its supporting thirty-three page narrative affidavit, which affidavit also fails to particularly describe the property to be seized, fails to describe unambiguously the offenses alleged, and is so lengthy, complex and unclear as to place no meaningful limits on the discretion of the twenty-five or so executing

officers, all contrary to this Court's decision in *Andresen v. Maryland*, 427 U.S. 463, 478-484 (1976).

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The pertinent provisions of the First and Fourth Amendments to the Constitution and Rule 41(e) of the Federal Rules of Criminal Procedure are as follows:

First Amendment of the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourth Amendment of the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Rule 41(e), Federal Rules of Criminal Procedure:

> (e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

STATEMENT OF THE CASE

The search warrant here involved [App.[2] 22-31] was issued by a United States Magistrate on July 4, 1977, upon the affidavit of a special agent of the Federal Bureau of Investigation [App. 42-74]. The warrant was executed on July 8, 1977, over a ten hour period, at the premises of The Founding Church of Scientology in Washington, D.C. by some twenty-five F.B.I. agents.[3] The government has conceded that, of the massive number of documents seized from the Church, "certain documents . . . should not have been seized" and that "approximately half of the documents will be returned. . . ." 436 F. Supp. at 698. For example, draft legal pleadings and attorney-client correspondence were seized from the Church's legal files.

The warrant directed the search of file cabinets on the fourth floor of the building that houses the Church's Washington, D.C. offices, and commanded the

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[2] "App." refers to the Appendix filed in the Court of Appeals.

[3] On the same day, two identically worded search warrants were executed at two Church of Scientology premises in Los Angeles, California by 134 Federal Bureau of Investigation agents. Seized were some 20,000 Church documents containing more than 100,000 pages. *See, United States v. Various Documents, etc.*, U.S.D.C. C.D. Cal., No. 77-2565-MML [Cross-appeals to the Court of Appeals for the Ninth Circuit pending].

seizure of 162 listed items or categories of items. Item 162 directs the seizure of:

> Any and all fruits, instrumentalities and evidence (at this time unknown) of the crimes of conspiracy, obstruction of justice and theft of government porperty [sic] in violation of 18 U.S. Code §§ 371, 1503 and 641 which facts recited in the accompanying affidavit make out.

The supporting affidavit consists of a thirty-three page narrative which concludes by alleging that there is probable cause to believe that, from 1974 through 1976, executives of the Los Angeles, California and Washington, D.C. Churches conspired to "steal"[4] documents from the federal government; that documents were in fact "stolen;" that copies of the documents are contained in the Church files in the two cities; that some officials of the Church conspired to obstruct justice by preparing a false response to expected inquiries of two implicated Church members by law enforcement authorities and federal grand juries; that a false response was in fact given to a grand jury by one member; and that writings evidencing the alleged conspiracy to obstruct justice are located in the Church files in the two cities [App. 73]. No indictments have been returned as a result of the foregoing allegations.

Two additional conspiracies to obstruct justice are thought to be alleged in the affidavit, as interpreted by the Court of Appeals in its Opinion herein[5] [APPENDIX A, p. 8a], although the *affiant* did not conclude that probable cause exists to believe these offenses were committed nor, accordingly, did the Magistrate make any such findings.

[4] Actually, despite repeated use of the phrase "stolen documents" in the affidavit, the only factual allegations in the affidavit refer to documents removed, copied and then returned to government files.

[5] These are identified as (2)(a) and (b) in the Opinion.

Among the 162 items listed in the search warrant were approximately 150 specifically described documents which for the most part, however, are nowhere mentioned in the sworn affidavit.

While the search was still in progress, the Church commenced these proceedings in the District Court, initially seeking to restrain the search and to impose a protective order sealing all documents seized, principally on the ground that the warrant was a general warrant. This motion was denied by the District Court without reaching the merits. The Church subsequently moved for return of all property seized, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure. In Re Search Warrant Dated July 4, 1977 for Premises at 2125 S Street, Northwest, Washington, D.C., 436 F. Supp. at 692 (1977).

On July 27, 1977, the District Court issued its Memorandum and Order, 436 F. Supp. 689 (APPENDIX E), concluding that the warrant herein is, on its face, an unconstitutional general warrant vesting virtually unlimited discretion in the executing officers as to which papers and files of the Church they deem to be "evidence" of the conspiracies alleged, or thought to be alleged, in the affidavit in support of the warrant.

The District Court, cognizant of "the need for increased sensitivity in cases in which religious organizations are involved," [436 F. Supp. at 693] concluded that Item 162 of the warrant "authorized – if indeed it did not direct – agents of the F.B.I. to examine carefully and completely the contents of every document in the fourth-floor files of the Church and to

make ad hoc, on-the-spot decisions as to which of those documents constitute evidence of conspiracy. . . ." 436 F. Supp. at 694.

Noting the breadth of the substantive law of conspiracy, the District Court reasoned:

> For unless the contents of any particular document rendered it manifestly criminal, the decision whether to seize it was complicated by the subjective considerations attending the law of conspiracy. In effect, each agent had been delegated authority to consider the relevance of the documents according to his own subjective standards as to what evidences the conspiracies suggested by the affidavit. . . . 436 F. Supp. at 698.

The *per curiam* Opinion of the Court of Appeals [APPENDIX A] was filed, as aforesaid, on December 1, 1977. The Court of Appeals vacated the orders of the District Court granting relief pursuant to F.R. Crim. P., Rule 41(e), the Court of Appeals concluding "[o]n the authority of *Andresen v. Maryland*, 427 U.S. 463, 478-484," that the warrant "is not a general warrant and is valid" [APPENDIX A, p. 16a]. *Andresen* is the only decision cited in the Court of Appeals Opinion – there is no mention of First Amendment concerns nor the relevant decisions of this Court in such cases as *Stanford v. Texas*, 379 U.S. 476 (1965) and *Marcus v. Search Warrants*, 367 U.S. 717 (1961).

Although the Church's Suggestion for Rehearing *En Banc* was denied, as aforesaid, five Judges of the Court of Appeals, other than the members of the panel which rendered the Opinion, stated their reasons for not requesting rehearing *en banc* [APPENDIX D].

The statement of Circuit Judge Wright, in which Chief Judge Bazelon and Circuit Judge Leventhal joined, expressed the view that rehearing *en banc* would merely cause "unnecessary delay in this litigation" and that "the case should now be passed on to the Supreme Court" [APPENDIX D, p. 26a].

Circuit Judge Robinson, joined by Circuit Judge McGowan, found rehearing *en banc* unnecessary only by straining to find limited precedential value in the panel opinion [APPENDIX D, pp. 26a-29a].[6]

REASONS FOR GRANTING THE WRIT

1. The case herein presents issues of exceptional importance, going to the very core of the precious liberties secured by the First and Fourth Amendments to the United States Constitution. It is no exaggeration to say that the Opinion of the Court of Appeals strikes at the heart of our constitutional heritage by resurrecting the general warrant as a permissible instrument of governmental authority to be used against a controversial religious organization. The Court of Appeals Opinion, if left standing, sounds the death knell for the constitutional protection against general warrants in the precise context in which the prohibition was born centuries ago.

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[6]Circuit Judges Robinson and McGowan stated that, in their view, although the "panel's opinion is not entirely clear," they "do not view it as a negation of the time-honored principle that the pivotal question is not whether a court in hindsight *can* find in the warrant a curb on the power to search but rather whether at the time of execution an officer reasonably and likely would take the warrant as authority for unbridled rummaging." (Emphasis supplied.) [APPENDIX D, p. 28a] With due respect, petitioner believes the panel's opinion quite clearly negates this time-honored principle.

The Court of Appeals Opinion upholds the constitutional validity of a search warrant, held by the District Court below to constitute an impermissible general warrant, to search the offices and files of a religious organization for, *inter alia,* "[a]ny and all fruits, instrumentalities, and evidence (at this time unknown) of the crimes of conspiracy, obstruction of justice and theft of government property . . . which facts recited in the accompanying affidavit [consisting of 33 pages] make out." The foregoing holding of the Court of Appeals eviscerates the Fourth Amendment's prohibition of general warrants, while completely ignoring the principle established in decisions of this Court that the protection against general warrants is to be accorded the most scrupulous attention where, as here, the warrant is directed at a religious organization or other entity or property presumptively entitled to the protection of the First Amendment. *Marcus v. Search Warrants of Property,* 367 U.S. 717 (1961); *Stanford v. Texas,* 379 U.S. 476 (1965). *See also, United States v. United States Dist. Ct.,* 407 U.S. 297, 313-314 (1972).

The July 8, 1977 raids on The Founding Church of Scientology by some 25 Federal Bureau of Investigation agents in Washington, D.C. and 134 agents in Los Angeles, all empowered to search for "evidence (at this time unknown)" of conspiratorial crimes so confusingly described that the Court of Appeals found offenses alleged even beyond those identified by the affiant, are raids on a religious group of a magnitude unparalleled in American history. Never before have so many government agents descended upon the private internal files of a church with so little guidance respecting the scope of the authorized search and seizure.

A.

The Court of Appeals Opinion rejects the conclusion of the District Court that the search warrant herein is an impermissible general warrant solely by relying on the superficial similarity between the search warrant here and the one upheld in *Andresen v. Maryland,* 427 U.S. 463 (1976). Before discussing the crucial distinctions between the warrant involved in *Andresen* and the warrant here, it is vital to emphasize that the *Andresen* warrant implicated no First Amendment concerns. The *Andresen* warrant was directed at the business offices of a lawyer suspected of perpetrating a real estate swindle. The *Andresen* warrant directed a search for and the seizure of evidence relevant to the crime of false pretenses with respect to one designated lot, Lot 13T in a designated subdivision. *See,* 427 U.S. at 480-482. The documents seized pursuant to the warrant in *Andresen* could be identified on their face as involving real estate transactions concerning "Lot 13T" without subjective evaluations of their contents. The warrant here is directed at a religious organization and authorizes a search of the files and records of the Church for, *inter alia,* presently unknown evidence of the "crimes of conspiracy, obstruction of justice and theft of government property," described only by reference to the thirty-three page affidavit in support of the warrant.

The Court of Appeals failed even to consider the First Amendment considerations inherent in such a warrant, notwithstanding this Court's admonitions that the Fourth Amendment requirement that search warrants must particularly describe the things to be seized is to be given the strictest adherence where a search warrant is aimed at an entity or property presumptively entitled to First Amendment protection.

See, Marcus v. Search Warrants of Property, 367 U.S. 717, 732 (1961) [warrants to seize "obscene materials" unconstitutional – "the warrants gave the broadest discretion to the executing officers; they . . . left to the judgment of each of the many police officers involved the selection of such magazines as in his view constituted 'obscene . . . publications.' "]; *Stanford v. Texas*, 379 U.S. 476, 486 (1965) [search warrant directing seizure of "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas" held general warrant]. The latter decision stressed the vital importance of the Fourth Amendment's requirement that search warrants particularly describe the things to be seized when the things are books or records ordinarily entitled to First Amendment protection. "No less a standard could be faithful to First Amendment freedoms." *Stanford v. Texas*, 379 U.S. 476, 481 (1965). *See also, Roaden v. Kentucky*, 413 U.S. 496, 502 (1973).

This Court frequently has noted the close historical and conceptual relationship between the First and Fourth Amendments. "Historically the struggle for freedom of speech and press in England was bound up with the issue of the scope of the search and seizure power." *Marcus v. Search Warrants of Property*, 367 U.S. 717, 724 (1961). Indeed, the unlimited and abusive power to search was first directed in England at nonconforming religious groups. "In Tudor England officers of the Crown were given roving commissions to search where they pleased in order to suppress and destroy the literature of dissent, both Catholic and Puritan." *Stanford v. Texas*, 379 U.S. 476, 482 (1965). In *United States v. United States Dist. Ct.*, 407 U.S. 297 (1972), this Court cautioned that:

> History abundantly documents the tendency of Government–however benevolent and benign its motives–to view with suspicion those who most frequently dispute its policies. Fourth Amendment protections become the more necessary when the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs. 407 U.S. 297, 314.

In the present case, the government predictably argues that the files and records of the Church of Scientology are not themselves entitled to First Amendment protection and insists that the search warrant here was directed merely at the written evidence of conspiratorial crimes.[7] However, the relevant point is not whether a highly trained government attorney or judge could exercise an informed discretion in deciding which Church records constitute evidence of the conspiracies described in the affidavit, but rather whether the critical language in this search warrant sufficiently circumscribed the discretion of some 25 Federal Bureau of Investigation agents in searching through the files and records of a church. The simple fact is that the broad language of this search warrant permits even the seizure of *literature* describing the doctrines of the Church on the theory that Church

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[7]There is no claim that the files of the Church here are akin to the "books and records" of an "unlawful enterprise" like the illegal liquor business in *Marron v. United States*, 275 U.S. 192, 198-199 (1927). *See, Stanford v. Texas*, 379 U.S. 476, 485, n. 16 (1965). The affidavit makes no claim that the Church of Scientology is not a bona fide religious organization, nor could any such claim legitimately be made. Moreover, the Church of Scientology is widely noted for its sponsorship of social reform programs throughout the United States and by these contributions as well as by its religious aims, the Church fulfills a vital, traditional, and indispensable role within our society.

doctrine allegedly encourages illegal conduct of the kind described in the search warrant affidavit (and, indeed, the government itself made the latter argument in one of its briefs filed in the Court of Appeals [Reply Brief for Appellant, p. 9, fn. 8] – the same argument appears in the affidavit seeking the search warrant. [App. 43, fn. 1]).

A search warrant which, as here, directs agents to scrutinize every paper in a Church's files also threatens the associational privacy of Church members, innocent of suspicion of wrongdoing, whose names appear on documents in Church files. *See, Buckley v. Valeo,* 424 U.S. 1, 96 S. Ct. 612, 632-633, 637-638 (1976). Even the unintentional seizure of innocuous Church papers with no nexus to criminal activities necessarily involves "compelled disclosure [which], in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo,* 424 U.S. 1, 96 S. Ct. at 656 (1976) and decisions there cited. The threat that innocent members of a Church unpopular with the government may find their names and communications disclosed by seizure under a broadly worded search warrant must inevitably chill the adherents' rights to religious liberty, freedom of expression, and freedom of association.

Here, far more than in *Andresen,* there are "grave dangers inherent in executing a warrant authorizing a search and seizure of a person's papers." Here, far more than in *Andresen,* "responsible officials, including judicial officials, must take care to assure that [such searches] are conducted in a manner that minimizes unwarranted intrusions upon privacy." *Andresen v. Maryland,* 427 U.S. 463, 482, n. 11 (1976).

Petitioner's fears are hardly imaginary, as the government itself concedes that papers were erroneously seized and that about half should be returned. *See,* 436 F. Supp. at 698. The particularity of description found in the present warrant by the Court of Appeals apparently was not found by the officers who executed this warrant. *See, Stanford v. Texas,* 379 U.S. 476, 485 (1965).

The Church makes no claim of any blanket immunity from a properly obtained and executed search warrant that does in fact particularly describe the things to be seized, interpreting the latter requirement consistent with the interests protected by the First Amendment. But such vital First Amendment concerns cannot, it is submitted, simply be ignored as in the Opinion of the Court of Appeals. For if the Church of Scientology may be subjected to a search by a horde of Federal Bureau of Investigation agents carrying warrants directing them to search for unknown evidence of conspiracies to "steal" government documents and obstruct justice, the same procedures may be employed against the offices of Catholic Archdioceses, or the national offices of the Democratic and Republican parties. The Court of Appeals Opinion would permit, for example, a search warrant directed at the offices of any religious organization or political party commanding the search for and seizure of files and records constituting presently unknown evidence of a conspiracy to make a campaign contribution in violation of federal campaign practices laws. If the prospect of 25 Federal Bureau of Investigation agents armed with such a warrant, rummaging through the national headquarters of a major political party or church for ten hours in search of undescribed evidence of such a conspiracy seems far-fetched, it is only because such an oppressive

exercise of governmental authority is not likely to be directed against a major political party or church.[8]

B.

In addition to overlooking all of the relevant First Amendment considerations outlined above, the Court of Appeals Opinion entirely misconstrues the Fourth Amendment holding of *Andresen v. Maryland, supra,* and gives *Andresen* a reading so expansive that, if left undisturbed, will result in the virtual elimination of the Fourth Amendment's requirement that search warrants particularly describe the property to be seized. The Opinion implicitly concedes that the language of Item 162 in the search warrant herein is impermissibly broad and general on its face unless Item 162 is read, as the Opinion does read it, as incorporating the entire thirty-three page supporting affidavit. The Opinion holds that if Item 162 of the search warrant is construed as incorporating the supporting affidavit in its entirety, then the language of Item 162 ["evidence (at this time unknown) of the crimes of conspiracy, obstruction of justice and theft of government property . . . which facts recited in the accompanying affidavit make out"] is rendered sufficient particularized to satisfy the requirements of the Fourth Amendment.

[8]While the crimes alleged in the affidavit are serious, they do not involve violence or the threat of violence, nor is the Church as an entity accused of being akin to a criminal enterprise. Under these circumstances, it is surprising – to say the least – that the government elected to seek the documents it believed existed in the Church files by means of a search warrant rather than a subpoena duces tecum with its attendant procedural safeguards. *See, United States v. Calandra,* 414 U.S. 338, 346 (1974).

While the incorporation of a lengthy, complex and ambiguous affidavit into a search warrant may serve the interests of administrative convenience, such incorporation hardly satisfies the Fourth Amendment's requirement that a *search warrant* particularly describe the things to be seized, and the decision in *Andresen* hardly authorizes such a dangerous procedure. In the first place, the Court in *Andresen* upheld the challenged phrase in the search warrant by concluding that it was "clear from the context" *of the search warrant itself* that "the challenged phrase be read as authorizing only the search for and seizure of evidence relating to 'the crime of false pretenses with respect to Lot 13T' " [427 U.S. at 480-481]. The Court did not resort to "incorporating" the supporting affidavit into the search warrant in order to find the particularity missing from the language of the warrant.

Secondly, if a search warrant containing an impermissibly general description of the property to be seized ever may be "cured" by incorporating the supporting affidavit, the affidavit at least must contain the specificity lacking in the warrant. Here, of course, there is no claim that the *property* to be seized is particularly described in the affidavit,[9] nor are the alleged *offenses* even described with the particularity present in the *Andresen* warrant.

The dangers inherent in the "incorporation" theory of the Opinion are thus immediately apparent. The search warrant in the present case was executed by many Federal Bureau of Investigation agents (the

[9]Indeed, the record below indicates that a great many of the seized items were not specifically listed anywhere else, but were apparently seized under the broad authority of section 162 of the warrant.

identically worded warrants used to search the Church premises in Los Angeles were executed by 134 agents) and there is no evidence that each of them even possessed a copy of the affidavit while executing the warrant, much less that all of the executing officers had familiarized themselves with the thirty-three page narrative prior to conducting the search. But more importantly, even if all the agents carried a copy of the affidavit and were familiar with its contents, there is no guarantee that each would understand precisely which offenses are actually "made out" by the "facts recited" in the affidavit – the Court of Appeals did not agree with the affiant nor, presumably, with the Magistrate. Much less can it be assumed that the agents would know, without an excessive exercise of discretion, which papers constituted *evidence* of the offenses confusingly "made out," since determination of which papers constitute "evidence" depends upon the substantive law of conspiracy, obstruction of justice, and "theft" of government property.

The purpose of the constitutional requirement that a search warrant particularly describe property to be seized is, after all, to limit the discretion of the executing officers so that the search does not degenerate into exploratory rummaging. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971); *United States v. Chadwick*, ____ U.S. ____, 97 S. Ct. 2476, 2482 (1977). This vitally important purpose cannot be achieved by reliance upon "incorporation" of lengthy, complex and ambiguous affidavits into search warrants which are then distributed to large numbers of police officers for execution. To expect that such a procedure will result in confining the discretion of the executing officers within narrow limits is not only wholly unrealistic, but places an unreasonable burden upon the

officers themselves. For if this thirty-three page affidavit may be incorporated into a search warrant in order to explain the meaning of otherwise vague language in the warrant, and then be delivered into the hands of 159 agents in two cities for execution, so may a 100 page affidavit be incorporated into a search warrant and distributed to any number of officers, all of whom will be expected to digest all the information contained in the affidavit in order to decide whether each document examined constitutes "presently unknown evidence" of uncertain offenses. All of this makes a mockery of the Fourth Amendment guarantee against exploratory searches and seizures contained in the requirement that search warrants particularly describe the things to be seized. There is nothing in this Court's decision in *Andresen v. Maryland, supra,* even remotely authorizing the "incorporation" doctrine as it appears in the Court of Appeals Opinion.

CONCLUSION

For the forcgoing reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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